IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6786 OF 2005

Sunil Kashinath Khairnar Applicant

versus

The State of Maharashtra Respondent

Mr.A.R.Shaikh for applicant.

Mr.K.V.Saste, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st November 2005

PC :

1. Heard Mr.Shaikh appearing for the applicant and Mr.Saste - APP for respondent.

2. The applicant is arrested on a complaint made by one Yamunabai for the offences punishable under sections 304, 273 and 328 registered by the Trimbakeshwar Police Station, District Nashik. The applicant is accused along with one Govind Kale.

3. The complaint alleges that on 29th May 2005 the complainant along with her husband, son and

daughter had gone for labour work. The daughter-in-law of complainant Sunanda was at home. The husband of Sunanda had gone out for work. The applicant reached the spot where the complainant and others were working. The husband of Yamunabai namely Shankar was requested by the applicant to come to their house and accordingly Shankar accompanied the complainant. However, after his return to the place of work, the complainant noticed that the said Shankar was drunk and completely under the influence of liquor. It appears that the complainant's husband Shankar as well as complainant's daughter-in-law Sunanda were handed over in some barrels of liquid which they consumed along with the applicant. The applicant also consumed the same. It was under the belief that what the applicant as well as deceased consumed was liquor. It is alleged by the complainant that after drinking the said liquid, her husband Shankar and later on her daughter Sunanda died. Although, Shankar was taken to hospital, he died at the Civil Hospital. The daughter-in-law of Sunanda after consuming the liquor went off to sleep and after waking up made the same complaint as Shankar but died at home. A complaint was filed on 31st May 2005 and applicant was arrested

on 3rd June 2005 and after initial police custody, he is in Magisterial Custody from the said date.

4. It is pointed out that the applicant as well as other accused filed Bail Applications which were rejected by a common judgement by the Sessions Judge, Nashik on 23rd June 2005. This was obviously prior to the charge sheet being filed.

5. After the charge sheet was filed, independent applications were made by Govind being Criminal Application No.482 of 2005 and by an order passed on 7th July 2005 the said Govind was enlarged on bail. The applicant's applications being Criminal Application Nos.638 of 2005 and 689 of 2005 filed after the charge sheet have been rejected. That is how the applicant is before me.

6. On the last date when this matter was placed the learned APP submitted that the Chemical Analysis Report is awaited. As far as Post Mortem Report is concerned, the cause of death is not stated because the Viscera was sent for chemical analysis. Now, the chemical analysis

report is on record and the Regional Forensic Laboratory has opined in this report dated 25th August 2005 that the general and specific chemical testing of exhibits 1, 2 and 3 which are two sealed bottles and one sealed phil does not reveal any poison. Even otherwise, Govind who is the owner of the shop from where the liquid was allegedly purchased, has been enlarged on bail. The applicant submits that he is entitled to similar treatment. Apart from that, the case of the applicant is that what was handed in to the deceased was liquor and it was consumed by him as well. It is not on account of the liquid which was allegedly consumed that the death resulted. The applicant submits that he is a truck driver and has a wife and two children. He is the only bread earner. There are no criminal antecedents.

7. In my view, since the charge sheet is filed and prima facie the post mortem report as well as chemical analysis report do not indicate the presence of any poison, this is a fit case where the applicant deserves to be enlarged on bail with similar conditions as that of the co-accused. Moreso, when the applicant is not in any manner connected with the said business which was conducted by the other accused.

8. Accordingly, the following order :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.37 of 2005 of Trimbakeshwar Police Station, on executing P.R.Bond in the sum of Rs.15,000/- with one solvent surety in the like amount;

(ii) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iii) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(iv) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)